

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ANDRES RIVERA, as parent and next
friend of A.R., a minor,

Plaintiff,

v.

Civ. No. 13-00397 KG/KBM

VOLVO CARS OF NORTH AMERICA, LLC,
a Delaware Corporation; ROE CORPORATIONS
I-X, inclusive; and JOHN DOES I-X, inclusive,

Defendants.

ORDER

THIS MATTER comes before the Court upon Plaintiff's Unopposed Motion for Leave to File Surreply (Doc. 296), filed May 18, 2015, and Defendant Volvo Cars of North America's (Defendant VCNA) Unopposed Motion for Leave to File a Response to any Sur-Reply Permitted Regarding Doc. No. 282 (Motion to File a Response to Plaintiff's Surreply) (Doc. 297), filed May 18, 2015.

On April 1, 2015, Defendant VCNA filed a Motion for Summary Judgment on Product Liability Negligence as a Matter of Law (Motion for Partial Summary Judgment). (Doc. 249). On April 20, 2015, Plaintiff filed a response. (Doc. 262). In Plaintiff's response, Plaintiff contends that Defendant VCNA's company representative, Thomas Andersson, testified at his deposition that Defendant VCNA "manufactured the 2001 Volvo S60." *Id.* at 7.

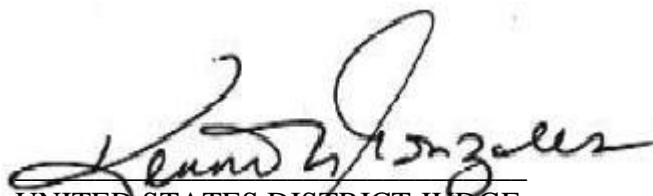
On May 7, 2015, Defendant filed a reply to its Motion for Partial Summary Judgment. (Doc. 282). Defendant VCNA asserts, for the first time, that Thomas Andersson is not its company representative; Thomas Andersson is the representative for Volvo Car Company, a non-party to this litigation. *Id.* at 2, 7-8. In support of its contention, Defendant cites (Doc. 76)

n.1. The Court's review of (Doc. 76) does not provide any clarification as to whether Thomas Andersson is or is not Defendant VCNA's company representative. Defendant also accuses Plaintiff's counsel of professional misconduct.

The Tenth Circuit Court of Appeals has held that, when a district court accepts a reply brief from a movant that contains new material or argument, the court must either: (1) permit a surreply from the nonmovant, or (2) refrain from relying on the new material or argument in ruling on the motion. *See Beaird v. Seagate Tech., Inc.*, 145 F.3d 1159, 1164 (10th Cir. 1998). Because Defendant VCNA raises the argument that Thomas Andersson is not its company representative in its reply for the first time, the Court grants Plaintiff's Motion For Leave to File a Surreply. In order for the Court to be fully advised in this matter, the Court grants Defendant VCNA's Motion to File a Response to Plaintiff's Surreply.

IT IS, THEREFORE, ORDERED that

1. Plaintiff's Unopposed Motion for Leave to File Surreply (Doc. 296) is granted;
2. Plaintiff may file a surreply on or before May 25, 2015;
3. Plaintiff's surreply is limited to six (6) double-spaced pages;
4. Defendant Volvo Cars of North America's Unopposed Motion for Leave to File a Response to any Sur-Reply Permitted Regarding Doc. No. 282 (Doc. 297) is granted;
5. Defendant VCNA shall have five (5) days thereafter to file a response to Plaintiff's surreply; and
6. Defendant VCNA's response is limited to six (6) double-spaced pages.


UNITED STATES DISTRICT JUDGE